IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. .....

PRE-FAB TRANSIT CO.,
Appellant,
v.
UNITED STATES OF AMERICA, and
The INTERSTATE COMMERCE COMMISSION, et al.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION

MOTION TO AFFIRM

Pursuant to Rule 16(1)(c) of the Rules of this Court, the Intervening Defendants, MIAMI TRANSPORTATION COMPANY, INC., DARLING FREIGHT, INC., GRAFF TRUCKING CO., INC., MELTON TRUCK LINES, INC., REED LINES, INC., SENTLE TRUCKING CORPORATION, DEATON, INC., DIRECT TRANSIT LINES, INC., JOYCE TRUCKING CO., MICHI-

GAN TRANSPORTATION CO., ST. LOUIS FREIGHT LINES, and WENHAM TRANSPORTATION, INC., move that the judgment of the District Court be affirmed.

STATEMENT

The Appellees herein adopt the United States of America and the Interstate Commerce Commission's statement of facts as presented to this Court in their Motion to Affirm.

ARGUMENT

1. This appeal presents no substantial question worthy of full consideration by this Court. The district court after careful consideration of all the facts surrounding the sequence of events leading to this action and the arguments advanced by Pre-Fab that they were denied a fair hearing by the Interstate Commerce Commission correctly rejected said arguments and found that the Interstate Commerce Commission acted properly and reasonably in deciding the issues presented. J.S. App. A 17. Furthermore, the District Court correctly found that the Interstate Commerce Commission interpreted the authority of Pre-Fab and that said interpretation in the factual situation presented said Court is supported by a rational basis. J.S. App. A 20.

The District Court in arriving at this conclusion stated:

> It is well settled in the law that as a general rule, the scope of judicial review of administrative action with regard to questions of fact is whether on the record as a whole the agency could reasonably

make the finding that it did, i.e., the "substantial evidence test;" and, with regard to questions of law, whether the judgment of the expert body has warrant in the record and a rational basis in the law. See, generally, *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951); *Gray v. Powell*, 314 U.S. 402 (1941) and the Administrative Procedure Act, Section 10, 5 U.S.C. Sec. 1001 et ff. (U.S. App. 17 and 18).

The decisions in this respect leave no questions as to the status of the law on this question.

In regard to the claim of Pre-Fab that the Interstate Commerce Commission restricted the Certificate of Pre-Fab, (J.S. 5), it is submitted that no restriction has been imposed upon the Pre-Fab Certificate as a result of the action by the Commission. Rather, the Commission under the authority of Sections 204(c) and 212(a) of the Interstate Commerce Commission Act (hereinafter referred to as the Act), 49 U.S.C. Sections 304(c); 49 Stat. 546 and 312(a); 49 Stat. 558, sought to determine whether Pre-Fab, in violation of Section 206(a) of the Act, 49 U.S.C. (306(a), 49 Stat. 561, had been transporting commodities as a common carrier by motor vehicle, not authorized by its Certificate, bearing Docket Number MC-107295 (Part A and Part B). By interpreting Pre-Fab's Certificate, the Commission did not restrict, modify, alter or revoke any portion of the Certificate, but rather clearly indicated what operating authority Pre-Fab had actually been granted. *Malone Freight Lines, Inc. v. United States*, 107 F. Supp. 946.

The interpretation of a certificate issued by the Commission is a question solely for that agency, *Service Storage & Transfer Co. v. Virginia*, 359 U.S. 171, and, unless such interpretation is clearly erroneous, it is controlling on the courts. *Jackson G. Nelson, Inc. v. United States*, 355 U.S. 554. In proceedings instituted under Section 204(c) and

212(a) of the Act the Commission is the administrative body charged with the interpretation of certificates of its own creation. In *J. B. Action, Inc. v. United States,* 221 F. Supp. 174, the court pointed out the formidable expertise of the Commission in the interpretation of its own certificates. It is the obligation of the court to recognize the Commission's skill and judgment in its field; and as such, it is not for the court to determine whether the court would have arrived at the same conclusion as the Commission did. *Columbia Transportation Co. v. United States,* 167 F. Supp. 5. The District Court recognized this long established principle and held:

> Courts recognize the comparative qualifications of court and agency to decide a particular issue, and agencies and their staffs are often deemed experts within their own specialized fields. Although talk of agency expertise often suffers from overkill, that fundamental proposition has merit in it. Congress has delegated power and authority to the various agencies intending them to do their respective jobs and reach practical results in terms of providing governmental services. Agency expertness in the field most often follows. Thus, this court is inclined to give weight to the Commission's latest considered interpretation of Pre-Fab's certificate, even though it apparently, to some degree, represents a change of mind by the experts.[1] I.C.C. may change its mind on certificate interpretation if the final determination is sound. See *Nelson, Inc. v. United States,* 355 U.S. 554, 561 (1958), and *Sims Motor Transport Lines, Inc v. United States,* 183 F. Supp. 113, 119, (1959), affirmed 362 U.S. 637 (1960). (J.S. App. A. 18).

2. It is accordingly manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

CONCLUSION

The District Court's decision is clearly correct and no substantial question is presented by this appeal. It is respectfully submitted that the judgment be affirmed.

Dated this 19th day of January, 1970.

Respectfully submitted,

ROBERT A. SULLIVAN,

MARTIN J. LEAVITT,
1800 Buhl Building,
Detroit, Michigan 48226,
Attorneys for Appellees.

ROBERT A. SULLIVAN,
Of Counsel.

January, 1970.